

**FOR IMMEDIATE RELEASE: September 16, 2015**  
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## Board denies petition to amend rule on sexual misconduct by physicians

DES MOINES, IA – The Iowa Board of Medicine has denied a petition to amend the Board's administrative rule that defines sexual misconduct by a physician.

The petition, filed by Jill Cirivello, Bettendorf, on July 10, 2015, averred that the rule, Iowa Administrative Code 653–13.7(4), was overly broad and overreaching and that the Board was not able to provide substantial evidence that the rule is necessary for the protection of patients. The petition also called for the prohibition of polygraph testing in Board investigations.

In statements made to the Board on July 10 and August 28, 2015, and in information contained in the petition, Cirivello referenced action taken by the Board in 2005 concerning her late husband, who was investigated for allegations of sexual misconduct and ordered to submit to a sexual misconduct evaluation. When the physician refused to submit to the evaluation because it included polygraph testing, the Board suspended the physician's medical license.

The Board's rule expresses that it is unprofessional and unethical conduct, and is the grounds for disciplinary action, for a physician to engage in any sexual conduct with a patient, the patient's guardian if the patient is a minor or a former patient unless the physician-patient relationship was completely terminated before the sexual conduct occurred.

The Board voted to deny the petition on August 28, 2015, and issued a formal order on September 10, 2015, setting forth the reasons for the denial. The Board said the rule is consistent with national ethical standards on physician-patient relationships and recognizes that because physicians have a superior position of power in the physician-patient relationship; it is difficult for the patient to give meaningful consent to a sexual relationship with the physician. Further, the Board expressed that it does not use polygraph testing, but utilizes nationally recognized evaluation programs that determine the appropriate testing.

**The following are the Board's order denying the petition for rulemaking and related documents:**

BEFORE THE IOWA BOARD OF MEDICINE.

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Re:	)	
	)	
PETITION BY JILL CIRIVELLO	)	
FOR AMENDMENT OF 653 IAC 13.7(4)	)	<b>ORDER DENYING PETITION</b>
RELATING TO SEXUAL MISCONDUCT	)	<b>FOR RULEMAKING</b>
	)	
	)	

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**I. SUMMARY**

On July 10, 2015, Jill Cirivello (Petitioner), presented a petition (**EXHIBIT A**) to the Iowa Board of Medicine (Board), pursuant to Iowa Code Chapter 17A.7 and Iowa Administrative Code 653–1.7, to amend Iowa Administrative Code 653–13.7(4), which describes inappropriate sexual conduct with a patient, a patient’s parent or guardian if the patient is a minor, or with a former patient. The Petitioner requested that the following provisions of Section 1285.240, Title 68, Professions and Occupations, Illinois Administrative Code, Standards on Dishonorable, Unethical or Unprofessional conduct, be included in the Iowa Administrative Code:

Immoral Conduct (by a physician occurs when a physician) abuses the physician/patient relationship by taking unfair advantage of a patient’s vulnerability.

In determining immoral conduct in the commission of any act related to the licensee’s practice the Disciplinary Board shall consider, but not be limited to, the following standards:

A) Taking advantage of a patient’s vulnerability by committing an act that violates established codes of professional behavior expected on a the part of a physician;

B) Unethical conduct with a patient that results in the patient engaging in unwanted personal, financial or sexual relationships with the physician.

In addition, the Petitioner requested the Board to adopt a rule to prohibit polygraph testing of physicians in any type of investigation.

The Petitioner met with Board Executive Director Mark Bowden and Board Legal Director Kent Nebel on July 30, 2015, to discuss her petition. On August 5, 2015, the Petitioner amended her petition (**EXHIBIT B**), requesting the Board adopt the following amendment to Iowa Administrative Code 653–13.7:

~~Iowa law also prohibits~~ *A physician is expected to maintain a professional relationship and boundaries with a patient or a patient’s guardian in the course of providing professional medical services. If a personal or sexual relationship develops between a patient or a patient’s guardian in the course of the*

*physician's personal life, the physician must terminate the physician-patient relationship.*

~~any sexual act or encounter with a patient or the patient's guardian, which may lead to disciplinary action and is~~

*Conduct towards a patient by a physician that could result in criminal or civil liability would be considered unprofessional and unethical conduct and the physician would be subject to disciplinary action.*

*Investigations conducted by the Board as a result of this provision shall be limited to the allegations in the complaint. In addition, alleged actions that occurred over three years prior to the complaint will not be considered due to the difficulty in obtaining accurate information. Any outside vendor utilized by the Board to assist with an investigation shall not subject a physician to polygraph testing.*

~~There are also certain provisions stating that a physician may engage in sexual contact with a former patient once the physician-patient relationship was completely terminated. However, the board of medicine may examine the specific circumstances surrounding the relationship to determine whether it was completely terminated. A psychiatrist may never engage in sexual contact with a current or former patient or the patient's guardian, even if the patient consents. A physician is also prohibited from engaging in sexual harassment.~~

The Petitioner appeared before the Board on August 28, 2015, and presented statements. In support of the petition, the Petitioner referenced action taken by the Board in 2005 concerning the Petitioner's husband, a physician, who was investigated for allegations of sexual misconduct and ordered to submit to sexual misconduct evaluation. The physician refused to submit to the evaluation because it included polygraph testing, which the physician contended has little to no scientific validity. The Board suspended the physician's medical license for failure to submit to the sexual misconduct evaluation. The Petitioner asserted that the Board's action "led to an abandonment of the life we had lived before the investigation."

## **II. DENIAL OF PETITION**

The Board, having reviewed the Petitioner's petition to adopt, amend, or repeal a rule, and considering statements she provided on July 10, 2014, and August 28, 2015, voted in open session on August 28, 2015, to deny the petition. Pursuant to Iowa Code 17A.7 and Iowa Administrative Code 653-1.7, the Board provides the following reasons for denial of the petition:

### **1. Petitioner asserts Iowa Administrative Code 653-13.7 (4) is overly broad and overreaching.**

The Board's rule, which has been effective since January 28, 2004, has worked well over time and is consistent with ethical standards on physician-patient relationships established by American Medical Association and the American Osteopathic Association:

**13.7(4) *Sexual conduct.*** It is unprofessional and unethical conduct, and is grounds for disciplinary action, for a physician to engage in conduct which violates the following prohibitions:

*a.* In the course of providing medical care, a physician shall not engage in contact, touching, or comments of a sexual nature with a patient, or with the patient's parent or guardian if the patient is a minor.

*b.* A physician shall not engage in any sexual conduct with a patient when that conduct occurs concurrent with the physician-patient relationship, regardless of whether the patient consents to that conduct.

*c.* A physician shall not engage in any sexual conduct with a former patient unless the physician-patient relationship was completely terminated before the sexual conduct occurred. In considering whether that relationship was completely terminated, the board will consider the duration of the physician-patient relationship, the nature of the medical services provided, the lapse of time since the physician-patient relationship ended, the degree of dependence in the physician-patient relationship, and the extent to which the physician used or exploited the trust, knowledge, emotions, or influence derived from the physician-patient relationship.

*d.* A psychiatrist, or a physician who provides mental health counseling to a patient, shall never engage in any sexual conduct with a current or former patient, or with that patient's parent or guardian if the patient was a minor, regardless of whether the patient consents to that conduct.

The American Medical Association Council on Ethical and Judicial Affairs states categorically that "[s]exual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct." <sup>1</sup> The Board, in applying this rule in sexual misconduct cases, believes such conduct may compromise patient care. The Board's rule is based on trust the patient must have in the physician and gives rise to physicians' ethical obligations to place patients' welfare above their own self-interest. The Board believes the proposed rule does not set forth the current standard of care regarding sexual misconduct and is too narrow in its prohibitions. Further, the proposed rule's limitation on investigations would prohibit the Board from taking action on serious conduct uncovered during an investigation simply because it was not on the "face of the complaint" or because it was not discovered within three years. Such a limitation is contrary to the Board's mission to protect the health, safety, and welfare of Iowans and contrary to the Court's interpretation of the Board's jurisdiction.

## **2. Petitioner asserts the Board is not able to provide substantial evidence that its current rule is necessary for the protection of patients.**

The Board's rule recognizes that physicians have a superior position of power in the relationship between patient and physician, and the relative position of the patient within the professional relationship is such that

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<sup>1</sup> Council on Ethical and Judicial Affairs, American Medical Association, <http://www.ama-assn.org/ama/pub/about-ama/our-people/ama-councils/council-ethical-judicial-affairs.page>

it is difficult for the patient to give meaningful consent to a sexual relationship with the patient's physician. Furthermore, Iowa Code 709.15, in prohibiting sexual exploitation by a physician, recognizes the vulnerability of a patient or a former patient.

**3. Petitioner requests Board to prohibit polygraph testing of physicians in any type of investigation.**

The Board does not utilize polygraph testing as an investigative tool. The Board does not order polygraph testing, but utilizes nationally recognized evaluation programs to assist in its investigations of sexual misconduct cases. These programs choose to utilize polygraph testing as a part of their comprehensive psychiatric evaluation process. The Board relies on their expertise to determine what testing is appropriate. National studies suggest that the polygraph appears to be a useful component of an independent, comprehensive evaluation for sexual misconduct, as it may provide additional information to better understand what happened and more accurately determine a strategy for possible rehabilitation of the physician.<sup>2</sup>

In conclusion, the Board believes Iowa Administrative Code 653–13.7 (4) is superior to the Petitioner's proposal, which is vague and lacks specific detail about potential violations, making it more difficult to prosecute cases of sexual misconduct.

**THEREFORE, IT IS HEREBY ORDERED** that the Petition for Rulemaking filed by Jill Cirivello is hereby **DENIED**.

10th day of September, 2015.



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Hamed Tewfik, M.D., Chairman  
Iowa Board of Medicine

Judicial review of the Board's action may be sought in accordance with the terms of the Iowa Administrative Procedure Act, from and after the date of this Order.<sup>3</sup>

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<sup>2</sup> A.J. Reid Finlayson, Kimberly P. Brown, Richard J. Iannelli, Ron Neufeld, Kendall Shull, Diaielle P. Marganoff, Peter R. Martin, "Professional Sexual Misconduct: The Role of The Polygraph in Independent Comprehensive Evaluation," *Journal of Medical Regulation*, Volume 101, Number 2, 2015: 23-34.

<sup>3</sup> Iowa Code Chapter 17A.

## **Statement and Petition for Rule Change to the Iowa Board of Medical Examiners**

**Submitted to Executive Director Mark Bowden and the Directors of the Iowa Board of Medicine**

**Submitted by Jill Cirivello**

**July 10, 2015**

This statement and petition is filed pursuant to Iowa Code 17A.7. When consulted, the Executive Director's Assistant informed me that there were no formal procedures of the Iowa Board of Medicine to petition for rule change as prescribed by that Code.

### **Statement**

In, 2005, this Board received a complaint from a disgruntled physician who my husband supervised that alleged he had a sexual relationship with a patient. The patient was questioned by this Board and denied it.

This Board did not receive even one complaint from a patient, medical resident, student or staff member alleging any wrong doing or sexual misconduct by my husband. And yet, that is what this Board reported to the media.

Then, following the allegation, this Board launched a year-long investigation of my husband that was filled with rumor and innuendo. The decision was made to require him to attend a sexual misconduct evaluation.

My husband dutifully called and made the appointment to attend the evaluation as required in Atlanta. While on the call, they explained the parts of this evaluation and one of those was to administer polygraph testing.

My husband led residents and other physicians in Journal Watch for most of his career and also chaired the hospital ethics committee. He knew that polygraph testing had little to no scientific validity and certainly not evidence-based as this Board requires of its' physicians. That, coupled with the fact that he knew he hadn't done anything wrong, started his path of civil disobedience.

That path led to an abandonment of the life we had lived before the investigation. He lost his license, his job and now his life. Many who knew my husband, including colleagues and family, would attribute some of the cause of his early death to the actions of this Board.

My husband was an amazing physician. He was kind and thoughtful to his patients. Many learned from his gentle and understanding ways. He accepted people as they were and did what he could to provide the best possible care.

Today I am proposing a change to your administrative rules so that another great physician will not be impacted by an antiquated rule of this Board. Your current rule regarding sexual misconduct is too overreaching and broad. So broad in fact that this Board actually alleged during the investigative process that I needed your protection!

Imagine my disbelief when the Board questioned me and asked how I met my husband. I was a nurse in the emergency room and my husband was a part-time emergency room doctor. He was not my supervisor. We were co-workers and we started dating. This Board alleged that he used his position to lure me into dating him. How absurd! I did not need this Board's protection from my husband! We were together for 29 years!

This Board should adopt a rule that provides protection from misconduct that is not overly broad and overreaching. This Board would not be able to provide substantial evidence that its current rule is necessary for the protection of patients. Our sister state of Illinois has a rule that provides the necessary amount of protection for patients without such a burden on physicians.

Please let's face some facts. Doctors are going to meet people in a variety of settings and sometimes they are going to date. They might date nurses, other doctors, staff and yes maybe even patients. That's how some people have met their spouse. It's just reality. We need to protect patients from unwanted conduct or a physician taking advantage of a vulnerable patient as addressed by the Illinois rules. But that should be the extent of the protection. Nothing more.

Again, when this Board's investigator questioned the patient who my husband allegedly had an affair with, she denied it. She didn't file a complaint with the Board even though she was contacted by the investigator on three different occasions. She admitted in her statement that she sent my husband e-mails, brought him gifts and called him frequently. Does this sound like unwanted contact or that he was trying to take advantage of a vulnerable patient? This was a woman who was invited to my home by me on many occasions for dinner. She was dating our good friend. My husband had only treated her for two minor ailments when her own physician from the same clinic was unavailable. For this you ruined our life.

I urge you not to let this happen to another family by changing your rules. Your current rule reads as follows:

**653—23.1 (272C) Grounds for discipline.**

**23.1(5) Sexual misconduct.** Engaging in sexual misconduct includes, but is not limited to, engaging in conduct set out at 653—subrule 13.7(4) or 13.7(6) as interpreted by the board.

**Iowa law also prohibits any sexual act or encounter with a patient or the patient's guardian, which may lead to disciplinary action and is considered unprofessional and unethical conduct. There are also certain provisions stating that a physician may engage in sexual contact with a former patient once the physician-patient relationship was completely terminated. However, the board of medicine may examine the specific circumstances surrounding the relationship to determine whether it was completely terminated. A psychiatrist may never engage in sexual contact with a current or former patient or the**



patient's guardian, even if the patient consents. A physician is also prohibited from engaging in sexual harassment.

### **Petition for Rule Change**

Again, pursuant to Iowa Code Chapter 17A, I petition to amend your rules on sexual misconduct to mirror the State of Illinois's rules which read as follows: (I have inserted the entire rule for clarity but am referring specifically to the highlighted portions in red dealing with sexual misconduct)

**TITLE 68: PROFESSIONS AND OCCUPATIONS  
CHAPTER VII: DEPARTMENT OF FINANCIAL AND PROFESSIONAL  
REGULATION  
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS  
PART 1285 MEDICAL PRACTICE ACT OF 1987  
SECTION 1285.240 STANDARDS**

#### **Section 1285.240 Standards**

- a) Dishonorable, Unethical or Unprofessional Conduct
  - 1) In determining what constitutes dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public, the Disciplinary Board shall consider whether the questioned activities:
    - A) Are violative of ethical standards of the profession (such as safeguard patient confidence and records within the constraints of law; respect the rights of patients, colleagues and other health professionals; observe laws under the Act and pertaining to any relevant specialty; to provide service with compassion and respect for human dignity);
    - B) Constitute a breach of the physician's responsibility to a patient;
    - C) Resulted in assumption by the physician of responsibility for delivery of patient care that the physician was not properly qualified or competent to render;
    - D) Resulted in a delegation of responsibility for delivery of patient care to persons who were not properly supervised or who were not competent to assume such responsibility;



- E) Caused actual harm to any member of the public; or
  - F) Are reasonably likely to cause harm to any member of the public in the future.
- 2) Questionable activities include, but are not limited to:
- A) Being convicted of any crime an essential element of which is larceny, embezzlement, obtaining money, property or credit by false pretenses or by means of a confidence game, dishonesty, fraud, misstatement or moral turpitude;
  - B) Delegating patient care responsibility to any individual when the physician has reason to believe that the person may not be competent;
  - C) Misrepresenting educational background, training, credentials, competence, or medical staff memberships;
  - D) Failing to properly supervise subordinate health professional and paraprofessional staff under the licensee's supervision and control in patient care responsibilities; or
  - E) Committing of any other act or omission that breaches the physician's responsibility to a patient according to accepted medical standards of practice.
- b) Immoral Conduct
- 1) Immoral conduct in the commission of any act related to the licensee's practice means conduct that:
    - A) Demonstrates moral indifference to the opinions of the good and respectable members of the profession;
    - B) Is inimical to the public welfare;
    - C) Abuses the physician/patient relationship by taking unfair advantage of a patient's vulnerability; and
    - D) Is committed in the course of the practice of medicine.
  - 2) In determining immoral conduct in the commission of any act related to the licensee's practice, the Disciplinary Board shall consider, but not be limited to, the following standards:

- A) Taking advantage of a patient's vulnerability by committing an act that violates established codes of professional behavior expected on the part of a physician;
  - B) Unethical conduct with a patient that results in the patient engaging in unwanted personal, financial or sexual relationships with the physician;
  - C) Conducting human experimentation or utilizing unproven drugs, medicine, surgery or equipment to treat patients, except as authorized for use in an approved research program pursuant to rules of the Illinois Department of Public Health authorizing research programs (77 Ill. Adm. Code 250.130) or as otherwise expressly authorized by law;
  - D) Committing an act, in the practice of persons licensed under the Act, of a flagrant, glaringly obvious nature, that constitutes conduct of such a distasteful nature that accepted codes of behavior or codes of ethics are breached;
  - E) Committing an act in a relationship with a patient so as to violate common standards of decency or propriety; or
  - F) Any other behavior that violates established codes of physician behavior or that violates established ethical principles commonly associated with the practice of medicine.
- c) In determining what constitutes gross negligence, the Disciplinary Board shall consider gross negligence to be an act or omission that is evidence of recklessness or carelessness toward or a disregard for the safety or well-being of the patient, and that results in injury to the patient.

(Source: Amended at 29 Ill. Reg. 18823, effective November 4, 2005)

In addition, I request that you amend your rules to prohibit polygraph testing of physicians in any type of investigation. You require your physicians to practice evidence-based medicine. Please practice the same principles in these investigations as well. See quote below.

**Scientific Validity of Polygraph Testing:  
A Research Review and Evaluation**

**A Technical Memorandum**

Washington, D. C.: U.S. Congress

Office of Technology Assessment

OTA-TM-H-15

November 1983

“In sum, OTA concluded that there is at **present only limited scientific evidence** for establishing the validity of polygraph testing. Even where the evidence seems to indicate that polygraph testing detects deceptive subjects better than chance (when using the control question technique in specific-incident criminal investigations), **significant error rates are possible**, and examiner and examinee differences and the use of countermeasures may further affect validity.”

I am not aware of any new evidence that would support the continuation of this practice.

Thank you for your time and consideration.

**From:** Jill [<mailto:jillcirivello@hotmail.com>]  
**Sent:** Wednesday, August 05, 2015 3:02 PM  
**To:** Nebel, Kent [IBM]  
**Subject:** Changes to Language

Kent,

Here are my changes to the language of 13.7 based on our conversation last Thursday where it was suggested that I modify the Board's current language rather than look at the Illinois language. I plan to attend the next Board meeting to state why I think this language would be even better than the Illinois language. Please let me know which date and at what time I should arrive.

Thank you,

Jill

## Iowa Administrative Code 13.7

~~Iowa law also prohibits~~ *A physician is expected to maintain a professional relationship and boundaries with a patient or a patient's guardian in the course of providing professional medical services. If a personal or sexual relationship develops between a patient or a patient's guardian in the course of the physician's personal life, the physician must terminate the physician-patient relationship.*

~~any sexual act or encounter with a patient or the patient's guardian, which may lead to disciplinary action and is~~

*Conduct towards a patient by a physician that could result in criminal or civil liability would be considered unprofessional*

and unethical conduct *and the physician would be subject to disciplinary action.*

*Investigations conducted by the Board as a result of this provision shall be limited to the allegations in the complaint. In addition, alleged actions that occurred over three years prior to the complaint will not be considered due to the difficulty in obtaining accurate information. Any outside vendor utilized by the Board to assist with an investigation shall not subject a physician to polygraph testing.*

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